

CITY OF VANCOUVER
PROFESSIONAL SERVICES AGREEMENT No. 100265
ERGONOMIC ASSESSMENT AND EARLY INTERVENTION SERVICES

This Agreement by and between the City of Vancouver, a municipal corporation, under the laws of the State of Washington, hereinafter referred to as "City" and Action Onsite hereinafter referred to as "Contractor", whose address is PO Box 393, Calimesa, CA, 92320.

WHEREAS, the City desires to engage the Contractor to provide early intervention program, ergonomic assessment and other related services on an as needed basis. Contractor has agreed to offer its professional services to perform said work per City issued Request for Proposal (RFP) No. 28-19, Contractor's proposal to said RFP; and

WHEREAS, the Contractor has represented by entering into this Agreement that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, and to the standards required by City.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

The City hereby agrees to engage the Contractor and the Contractor hereby agrees to perform, in a satisfactory and proper manner, as determined by the City, the services hereafter set forth in connection with this Agreement:

1. Statement of Work.

Contractor agrees to provide early intervention program, ergonomic assessment and other related services per RFP No. 28-19 and Contractor's response to said RFP on file in City of Vancouver Procurement Services by reference hereto made a part of this Agreement.

Contractor shall provide the following services at the direction of the City's Project Manager:

- Provide qualified personnel on-site, including Occupational Therapists, Physical Therapists, Physical Therapist Assistant and/or Athletic Trainers to provide required services;
- Implement an employee awareness program to provide training to identify early symptoms of injury;
- Provide job site safety and ergonomic practices informational material to create awareness about proactive measures employees can take to protect themselves from injuries;
- Provide wellness screenings and an analysis of risk factors for individual employees;

- Identify and assess potential job site safety issues and ergonomic hazards and make recommendations on how to mitigate, or eliminate, the issues and hazards found;
- Implement an ergonomic-focused, team and individual based training program that includes stretches, and strengthening exercises for employees to help reduce and/or prevent injuries;
- Lead teams in stretching and strengthening activities;
- Conduct facility and job site walk-throughs and provide a detailed report on observed employee general safety and ergonomic practices awareness;
- Provide materials to enhance supervisors and managers communications about job site safety and ergonomic practices awareness;
- Prepare monthly statistical analysis and evaluation of program effectiveness report with graphs illustrating results, in a format defined by the City;
- Provide clinical or phone consultations from 8:00 a.m. to 8:00 p.m. Pacific time;
- Contractor shall provide evidence that on-site personnel have successfully passed Washington State Patrol background check; and
- Contractor shall provide proof of licensing/certification that Contractor's onsite personnel are licensed or certified as required for the service they are providing.

First aid supplies shall be provided by the City or Contractor as follows:

- The City will provide the following first aid supplies to be available on-site:
 - Treatment table;
 - Biofreeze or equivalent;
 - Theraband;
 - Kinesio tape;
 - Tubigrip-size D;
 - Wrist, Elbow and Low Back supports; and
 - Medical posters for education.
- Contractor shall maintain a written inventory of City supplied first aid supplies and shall be responsible for ensuring that an adequate level of first aid supplies are available at all times. Contractor shall be responsible for contacting the City's Project Manager with a written request for additional first aid supplies when replenishment is required.
- Contractor shall provide all other supplies required. Reimbursement to the Contractor shall be at actual cost of the supplies purchased by the Contractor. All reimbursement requests shall include copies of detailed invoices documenting the type and quantity of supplies purchased.

This is a needs-based contract. The Contractor is not guaranteed a minimum or a maximum amount of work under this Contract. The City reserves the right to use this contract,

or may instead select service providers through other available mechanisms as suited to the City's need. This contract is for the convenience of the City and does not carry any estimates as to how much could be spent.

All work must be authorized and approved by the City's Project Manager in writing before any work begins. Contractor shall approach this project in a manner consistent with its customary practice. Contractor shall actively seek collaborative input from City staff.

Compensation for services provided shall be at the flat hourly rate of \$135.00 USD, per clinician, for all services including: Early Intervention, Job Coaching, Workstations Assessments, Proactive Wellness, Customized Flex and Stretch Routines, Job Analysis and Time Motion Studies

Compensation is limited to the amount specified for each specific task and/or sub-task, unless amended per Section 15 of this Agreement. The City expects Contractor to complete the work stated within the number of hours stated for each task and/or sub-task. If the work requires fewer hours than those estimated, the Contractor will be paid for the actual worked hours necessary to complete that task and/or sub-task. If the Contractor underestimated the number of hours required to perform the work, Contractor shall be paid up to the maximum number of hours stated for the task and/or sub-task. Compensation may be amended, at the City's sole discretion, for documentable circumstances not reasonably foreseeable to either party at the time the task and/or subtask is initiated, or for changes to the scope of work or deliverables requested by the City. All deliverables must be acceptable to the City, at the sole discretion of the City.

Travel expenses are not included in this Contract.

2. Order of Precedence.

Where there is a conflict among or between any of these documents, the controlling documents shall be the first listed in the following sequence: Amendments to this Agreement; this Agreement; Purchase Orders; Contractor's submitted proposal to RFP No. 28-19 and RFP No. 28-19.

3. Relation of Parties.

The Contractor, its sub consultants, agents and employees are independent contractors performing professional services for City and are not employees of City. The Contractor, its subcontractors, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees. The Contractor,

sub consultants, agents and employees shall not have the authority to bind City in any way except as may be specifically provided herein.

4. E-Verify.

Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Agreement are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply with this subsection shall be considered a material breach.

5. Time of Performance.

The service of the Contractor is to commence as of November 1, 2019. It is agreed services hereunder shall be completed by October 31, 2024.

6. Delays and Extensions of Time.

If the Contractor is delayed at any time in the progress of providing services covered by the Agreement, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by Contractor and City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to City.

7. Compensation and Schedule of Payments.

City shall pay the Contractor at the rates indicated in Section 1 for work performed under the terms of this Agreement. This is the maximum amount to be paid under this Agreement and it shall not be exceeded without City's prior written authorization in the form of a negotiated and executed amendment. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the project as set forth herein. The Contractor shall submit monthly invoices to City covering both professional fees and project expenses, if any, for fees and expenses from the previous month. Payments to Contractor shall be net 30 days.

The City reserves the right to correct any invoices paid in error according to the rates set forth in this Agreement. City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract/purchase order (PO) number given on the notice to proceed must be referenced on any invoice submitted for payment.

During the life of this Contract, and in consideration of the City's business needs, the Contractor may make requests for compensation adjustments. In consideration of market conditions, the City may allow an annual adjustment to compensation paid for the actual cost of services. Requests for pricing adjustments shall be supported by the applicable Consumer Price Index – All Urban Consumers (Seattle-Tacoma-Bremerton WA) area and shall be submitted before the anniversary date of this Agreement. The City will review the request and, at its sole discretion, make a decision. If accepted, the adjustment shall become effective on the anniversary date of the Agreement and will be firm for the remainder of the contracted period. All adjustments will be authorized by written contract amendment.

8. Ownership of Records and Documents.

Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Agreement, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor, and any know-how, methodologies or processes used by Contractor to provide the services or project deliverables under this Contract shall remain property of Contractor.

9. Termination.

The City, at its sole discretion, may terminate this contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Agreement is terminated prior to the completion of work, Contractor will only be paid for the portion of the work completed at the time of termination of the Agreement.

10. Evaluation and Compliance with the Law.

The Contractor shall have the authority to control and direct the performance and details of the work described herein. The Contractor agrees to comply with all relevant, federal, state and municipal laws, rules and regulations.

11. City Business and Occupation License.

Contractors will be required to obtain a business license when contracting with the City of Vancouver, unless allowable exemptions apply. Businesses/Contractors shall contact the State of Washington Business License Service (BLS) at: <http://bls.dor.wa.gov/file.aspx>, telephone 800-451-7985, or go to <https://dor.wa.gov/city-license-endorsements/vancouver>

or <https://www.cityofvancouver.us/fms/page/business-and-special-licenses>, to determine whether a business license is required pursuant to VMC Ch. 5.04.

12. Liability and Hold Harmless.

Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature (including patent infringement or copyright claims) to the extent arising out of, or in connection with, or incident to, the negligent performance or willful misconduct pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such cost, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. Contractor specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. Contractor is an independent contractor and responsible for the safety of its employees.

13. Insurance.

Contractor shall obtain and keep in force during the entire term of this agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor.

- a. **Liability Insurance.** Contractor shall maintain commercial General Liability insurance with a limit of not less than One Million Dollars (\$1,000,000) for each occurrence, and Two Million Dollars (\$2,000,000) aggregate, and not less than One Million Dollars (\$1,000,000) combined single limit Automobile Liability coverage. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operation and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement. All liability insurance required herein shall be under a comprehensive or commercial general liability and business, policies.

- b. City Listed as an Additional Insured: The City of Vancouver, its agents, representatives, officers, directors, elected and appointed officials, volunteers and employees must be named as an additional insured on the Commercial General Liability policy and shown on the certificate as an additional insured. A copy of the additional insured endorsements at least as broad as ISO forms CG 20 10 must be included with the certificate of insurance.
- c. Worker's Compensation. Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services.
- d. Contract shall provide Stop Gap / Employers' Liability insurance. This coverage may be listed on either the Commercial General Liability or Workers' Compensation policies. Contract shall maintain coverage with limits no less than One Million Dollars (\$1,000,000) Each Accident, One Million Dollars (\$1,000,000) Disease - Policy Limit, and One Million Dollars (\$1,000,000) Disease – Each Employee.
- e. Professional Liability. The Contractor shall obtain and keep in force during the entire term of this Agreement, Professional Liability insurance (Errors and Omissions) against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor. The amount of coverage provided by such insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit.
- f. The City of Vancouver shall be listed on the Certificate as the Certificate Holder.
- g. Coverage Trigger: The insurance must be written on an "occurrence" basis. This must be indicated on the certificate. Claims-made policies will be accepted for Professional Liability coverage only.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

The foregoing provisions may be satisfied instead through the Contractor's primary Commercial General and Automobile Liability coverage, or any combination thereof that achieves the overall required limits of insurance.

14. Notices.

All notices which are given or required to be given pursuant to this Agreement shall be hand delivered or mailed postage paid as follows:

City:

Anna Vogel
City of Vancouver
415 W 6th Street
P O Box 1995
Vancouver WA 98668-1995

Contractor:

Sonia Lopez
Action Onsite
PO Box 393
Calimesa CA 92320

15. Amendments.

All changes to this Agreement, including changes to the statement of work and compensation, must be made by written amendment and signed by all parties to this Agreement.

16. Scope of Agreement.

This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Agreement.

17. Ratification.

Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

18. Governing Law/Venue.

This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. The contractor shall have legal authority to enter into this agreement and be at least 18 years of age. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

19. Cooperative Purchasing:

The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City of Vancouver incurring any financial or legal liability for such purchases. The City of Vancouver agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City of Vancouver is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.

20. Public Disclosure Compliance.

The parties acknowledge that the City is an "agency" within the meaning of the Washington Public Records Act, Ch 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Ch.42.17 RCW for withholding or delaying public disclosure of such information.

21. Debarment.

The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.

22. Nondiscrimination.

The City of Vancouver, WA is an equal opportunity employer. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

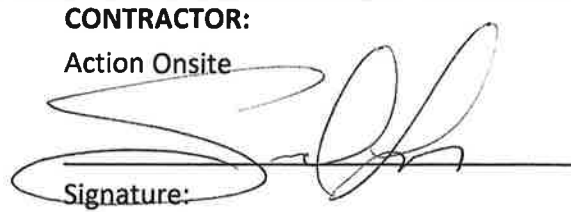
DATED this 14th day of FEBRUARY, 2020

~~CITY OF VANCOUVER,~~
A municipal corporation


Eric Holmes, City Manager

CONTRACTOR:

Action Onsite


Signature:

Attest:




Natasha Ramras, City Clerk

SONIA D. LOPEZ, OWNER, CEO, PRE S.

By: Printed Name / Title

Approved as to Form:


for Jonathan Young, City Attorney
by MICHAEL SIGREY, ASST. CITY ATTORNEY